IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15795 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

K.R.EDUCATION AND CHARITABLE TRUST

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 15795 of 2003

MR NC SHAH for Petitioner No. 1

MR NV GANDHI for Petitioner No. 1

MS NANDINI JOSHI, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE M.S.SHAH

Date of decision: 09/12/2003

ORAL JUDGEMENT

Rule. Ms.Nandini Joshi, learned AGP is directed to waive service of Rule for the respondents.

In the facts and circumstances of the case, the petition is taken up for final disposal today.

2. The petitioner-trust had submitted an application for permission to establish a Higher Secondary School with Science Stream with grant-in-aid facility. The application was given on August 3, 1996. The

Commissioner for Higher Education granted permission for opening one division of Std. XI in Science stream with effect from June 1997, but without facility of grant-in-aid. According to the petitioner, vide Government Resolution dated September 1, 1997 the Education Department has resolved to convert all the unaided higher secondary schools with Science stream and the girls' high schools into aided schools, provided that they were established during the period between 1993 and 1997. Since the petitioner had started the Higher Secondary School in Science Stream with effect from June 1997, the petitioner submitted the representation for getting grant. However, by communication dated July 19, 2000 (Annexure-I), the State Government in the Education Department rejected the petitioner's representation. Hence, the petitioner has challenged the said decision in this petition filed under Article 226 of the Constitution.

3. At the hearing of this petition, the learned counsel for the petitioner has pointed out that the petitioner-trust had made several representations requesting the Government to grant the petitioner the benefit of grant-in-aid facility, as the petitioner's case was covered by the Government Resolution dated September 1, 1997 (Annexure-D). The said Government Resolution provides that in view of importance of the Science education, the Government has decided to grant permission to establish higher secondary schools with science stream with grant facility with effect from June 1997 and the petitioner-trust has established the Higher Secondary School with science stream with effect from June 1997. Hence, the petitioner's case is squarely covered by the aforesaid resolution.

It is further submitted on behalf of the petitioner that the impugned decision dated July 19, 2000 does not contain any reason for not granting the petitioner's request for grant-in-aid benefits to the Higher Secondary School with Science Stream established by the petitioner-trust since June 1997. Subsequently, by Government order dated March 19, 2001 (Annexure-L), the State Government has granted sanction for grant-in-aid to many higher secondary schools with Science stream viz. in cases of Vivekanand Vidhyalaya, Jetpur, District Rajkot, Kanya Shala, Nanamava, District Rajkot, Umiya Higher Secondary School, Sola, Ahmedabad and Prakash High School, Bareja, Dascroi, Ahmedabad. The petitioner-trust submitted the representation dated September 28, 2000 (Annexure-K) giving details of the aforesaid schools.

4. In response to the notice, Ms.Nandini Joshi, learned AGP appears for the respondent-authorities and submits that the impugned decision is an administrative decision and that the petitioner-trust cannot get grant-in-aid as a matter of right.

5. Having heard the learned counsel for the parties, it appears to the Court that since the impugned decision dated July 19, 2000 does not contain any reason and in spite of the fact that the petitioner has made several representations pointing out that in cases of some other schools, which were earlier granted recognition as non-grantable schools, have been subsequently given grant-in-aid benefits, it would be in the fitness of things if the impugned decision is quashed and the matter is remanded to the Government for taking a fresh decision in accordance with law after giving the petitioner an opportunity of being heard and, thereafter, the State Government is required to pass a speaking order.

6. Accordingly, the petition is allowed. The impugned decision dated July 19, 2000 at Annexure-I is quashed and set aside and the matter is remanded to the State Government for taking a fresh decision in accordance with law after giving the petitioner an opportunity of being heard and after dealing with the petitioner's grievance about discrimination vis-a-vis other similarly situated schools. In case the State Government proposes to reject the petitioner's representation for grant-in-aid facility, the State Government shall pass a speaking order and communicate the same to the petitioner trust.

In case, the decision is adverse to the petitioner, the petitioner will be at liberty to challenge the same in the appropriate proceedings.

7. Rule is accordingly made absolute to the above extent with no order as to costs.

Direct service qua respondent No.1 is permitted.

(M.S.Shah,J)

(pathan)